

TRUSTEE LIABILITY

- A trustee may be entitled to immunization, defense and indemnification provisions of MCA 2-9-305 if they meet the definition of an employee as defined in MCA 2-9-101. Due to the substantial authority of library boards, a trustee may or may not meet the definition of an employee as defined in MCA 2-9-101. A trustee should contact their city or county attorney or if appropriate the city or county's insurance carrier to see if they meet the definition of an employee as defined in MCA 2-9-101.
- Employees, as defined in MCA 2-9-101, are entitled to immunization, defense, and indemnification provisions of MCA 2-9-305.
- If a public officer or employee is civilly sued for a negligent act, error, or omission, including an alleged violation under 42 U.S.C. 1983 while acting in the course and scope of their office or employment, the governmental entity employer will defend and indemnify the officer or employee, except as provided in subsection (6) of MCA 2-9-305.
- The exceptions or exclusions as described in that section are:
 - If the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment;
 - If the conduct of the employee constitutes a criminal offense;
 - If the employee settled the claim without the consent of the governmental entity employers; and
 - If the employee fails or refuses to cooperate in the defense.
- If one or more of the circumstances above exists, the officer or employee may not be defended or indemnified by the governmental entity employer. Either a court or the governmental entity employer may make the determination whether one or more exclusions in subsection (6) applies. See MCA 2-9-305(7)